

## **BILL ANALYSIS**

Senate Research Center

S.B. 1292  
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Criminal Justice  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1292 requires the state to perform DNA testing of all biological evidence that was collected as part of an investigation of an offense prior to trial in any capital offense where the state is seeking the death penalty. It requires the Department of Public Safety of the State of Texas to pay for all the DNA testing performed in accordance with this law.

This bill helps prevent costly appeals in the future, helps prevent wrongful convictions, and ensures public safety. Testing all the relevant DNA evidence before the trial ensures that an innocent person is not on death row for a crime he or she did not commit. It also saves the state money related to incarceration and compensation costs. Finally, it keeps society safe by making sure that the guilty party is found and convicted.

S.B. 1292 amends current law relating to DNA testing of biological evidence in certain capital cases.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 38.43, Code of Criminal Procedure, by adding Subsections (i), (j), (k), (l), and (m), as follows:

(i) Requires the state to require either the Department of Public Safety of the State of Texas (DPS) through one of its laboratories or a laboratory accredited under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code, subject to Subsection (j), before a defendant is tried for a capital offense in which the state is seeking the death penalty, to perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. Requires the laboratory that performs the DNA testing to pay for all DNA testing performed in accordance with this subsection.

(j) Requires the court, as soon as practicable after the defendant is charged with a capital offense, or on a motion by the state or the defendant in a capital case, unless the state has affirmatively waived the death penalty in writing, to order the state and the defendant to meet and confer about which biological materials collected as part of the investigation of the offense qualify as biological evidence that is required to be tested under Subsection (i). Requires that the biological evidence, if the state and the defendant agree on which biological materials constitute biological evidence, to be tested in accordance with Subsection (i). Authorizes the state or the defendant, if the state and the defendant do not agree on which biological materials qualify as biological evidence, to request the court to hold a hearing to determine the issue. Requires the court, on receipt of a request for a hearing under this subsection, to set a date for the hearing and provide written notice of the hearing date to the state and the defendant. Provides that at the hearing there is a rebuttable presumption that the biological material that the defendant requests to be tested

constitutes biological evidence that is required to be tested under Subsection (i). Provides that this subsection does not in any way prohibit the state from testing biological evidence in the state's possession.

(k) Requires that the laboratory that tested the evidence, if an item of biological evidence is destroyed or lost as a result of DNA testing performed under Subsection (i), provide to the defendant any bench notes prepared by the laboratory that are related to the testing of the evidence and the results of that testing.

(l) Provides that the defendant's exclusive remedy for testing that was not performed as required under Subsection (i) or (j) is to seek a writ of mandamus from the court of criminal appeals at any time on or before the date an application for a writ of habeas corpus is due to be filed in the defendant's case under Section 4(a) (relating to requiring that an application for a writ of habeas corpus, returnable to the court of criminal appeals, be filed in the convicting court not later than a certain date), Article 11.071 (Procedure in Death Penalty Case). Provides that an application for a writ of mandamus under this subsection does not toll any period of limitations applicable to a habeas petition under state or federal law. Entitles the defendant is to only one application for a writ of mandamus under this subsection. Authorizes the defendant to file one additional motion for forensic testing under Chapter 64 (Motion for Forensic DNA Testing) at any time after the date an application for a writ of habeas corpus is filed in the defendant's case under Section 4(a), Article 11.071.

(m) Authorizes a defendant to have another laboratory accredited under Section 411.0205, Government Code, perform additional testing of any biological evidence required to be tested under Subsection (i). Authorizes a defendant, on an ex parte showing of good cause to the court, to have a laboratory accredited under Section 411.0205, Government Code, perform testing of any biological material that is not required to be tested under Subsection (i). Provides that the defendant is responsible for the cost of any testing performed under this subsection.

SECTION 2. Makes application of Articles 38.43(i), (j), (k), (l), and (m), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2013.